

**BEFORE THE MUNICIPAL OFFICERS ELECTORAL BOARD
OF THE CITY OF EVANSTON**

William Arndt, Petitioner-Objector,)	
)	
vs.)	No. 17-MOEB (Mayor)-EV-02; EV-03
)	
Steve Hagerty Respondent, Candidate;)	
)	
Gary Gaspard, Respondent-Candidate)	
)	

ELECTORAL BOARD FINDINGS AND ORDER

The candidates specified above, filed nomination papers to run for the office of Mayor, City of Evanston, in the 2017 Municipal Election. The objector, William Arndt, filed objections to those nomination papers, alleging that they were invalid.

The findings, and Order set forth below, are entered on a consolidated basis and apply equally to case nos. 17-MOEB (Mayor) –EV-02; and EV-03.

Procedural History

Pursuant to notice, the Municipal Officers Electoral Board of the City of Evanston (hereafter "MOEB"), convened public hearings to consider the objections filed by the objector. Due notice of the hearings were given pursuant to the Illinois Open Meetings Act and the Illinois Election Code. An initial hearing was conducted on December 12, 2016. All parties were present in person or through counsel (Candidate Gaspard appeared late on December 12th).

The Board recessed the December 12th hearing for the objector and candidates to brief the issues. A second hearing for all cases was convened on December 16, 2016, during which the objection in case no. 17-MOEB (Mayor)-EV-01 was voluntarily withdrawn by the objector. Case nos. 17-MOEB (Mayor)-EV-02; and EV-03 were continued to December 19, 2016 due to a medical emergency.

All hearings were transcribed by a certified court reporter.

Findings

1. At the December 12th hearing, certain exhibits were marked and moved as evidence into the Record. The exhibits include:
 - The call and agenda for the December 12th hearing;
 - The Verified Objector's Petitions for the 3 above captioned cases;
 - The Nomination Papers filed by the candidates for the 3 above captioned cases;
 - Appearances by the objector's counsel, and candidates/candidate's counsel; and
 - The Rules of Procedure of the MOEB.
- Additional exhibits were moved into evidence into the Record on December 16th.

2. All of these exhibits were admitted into evidence by agreement of all parties. Notice of the hearings were proper and all parties consented to jurisdiction of the MOEB.
3. The MOEB took notice of the relevant provisions of the Illinois Election Code. The MOEB reviewed all papers and briefs filed in these cases by the parties in considering the issues of fact and law presented.
4. The MOEB was able to judge the credibility of all who presented the cases of the respective parties, to weigh the evidence, to consider applicable law, and to draw the appropriate inferences from said presentations.
5. The matter raised by City Clerk Greene at the hearing dated December 16, 2016 was not considered by the MOEB, and formed no basis for opinion by the MOEB on case nos. 17-MOEB (Mayor)-EV-02; and EV-03.
6. Upon conclusion of the third hearing, the MOEB issued this Order.

Applicable Law

7. The Illinois Election Code vests the MOEB with the power to hear and decide objections to nomination papers. 10 ILCS 5/10-1 – 10.1. An electoral board “will only consider written objections and the written specifications of such objections to the original petitions, as set forth in the objector’s petition.” A Board cannot raise its own objections to nominating petitions *sua sponte*. *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581.
8. Objector’s principal argument in support of the objections to all 3 candidates is that the effect of Evanston’s binding referendum in 1992 was that: “....there would be a primary for mayoral election moving forward.” The conclusion to that point was that the 3 candidates whose nomination papers failed to correctly specify that they were filing for the “February 28, 2017 Consolidated Primary Election.” The objector filed briefs in support of the objections to the Gaspard and Hagerty nomination papers, but declined to file a brief in support of the Tendam objection. Notably, Objector’s briefs failed to cite to any case law or electoral board decisions in support of the arguments advanced. The MOEB noted this lack of cited precedent in its consideration of the objections.
9. Candidate Hagerty, through counsel, filed a brief opposing the objector’s objection and requesting the MOEB overrule the objection. The brief argued the nomination papers substantially complied with applicable Election Code requirements, and that read as whole, comported with applicable case law such as *Lyons MVP Party v. Lyons MOEB*, 407 Ill.App.3d 1004, (1st Dist. 2011), and *Atkinson v. Schelling*, 2013 Ill.App.2d 130140 (2nd Dist. 2013).
10. The MOEB identified the following 10 City of Chicago Electoral Board decisions which stand for the proposition that designating the wrong election or referring to an incorrect election date, are insufficient grounds to invalidate nomination papers:

Campos v. Rangel 95-EB-ALD-79 (Chicago Electoral Board 1995);

Anderson v. Levi 07-EB-ALD-35 (Chicago Electoral Board 2007);
Brown v. Mercado 07-EB-ALD-120 (Chicago Electoral Board 2007);
Strnad v. Reboyras 07-EB-ALD-171 (Chicago Electoral Board 2007);
Williams v. Thomas 08-EB-WC-17 (Chicago Electoral Board 2007);
Ahimaz v. Sherriff 92-EB-WC-88 (Chicago Electoral Board 1992);
Gordon v. Pellett 92-EB-WC-93 (Chicago Electoral Board 1992);
Borges v. Mitchell 11-EB-ALD-41 (Chicago Electoral Board 2011);
Stamps v. Lomax 15-EB-ALD-140 (Chicago Electoral Board 2015); and
Summers v. Morrow 04-EB-WC-09 (Chicago Electoral Board 2004);

The facts presented in those electoral board decisions are not dissimilar to the facts presented in the 3 cases before the MOEB.

11. The Illinois Supreme Court stated that substantial compliance by a candidate with the Election Code is a sufficient basis to overrule objections where there is no adequate chance for voter confusion regarding the office a candidate seeks. *Lewis v. Dunne*, 344 NE2d 443 (1976). The doctrine of "substantial compliance" is black letter law followed by dozens of appellate decisions and electoral board decisions. Access to a position on the ballot is a substantial right which should not be lightly denied. *Welch v. Johnson*, 147 Ill.2d 40 (1992).

The Election Code states:

Nonpartisan primary elections; uncontested office. A city incorporated under this Code that elects municipal officers at nonpartisan primary and general elections shall conduct the elections as provided in the Election Code, except that no office for which nomination is uncontested shall be included on the primary ballot and **no primary shall be held for that office. For the purposes of this Section, an office is uncontested when not more than 4 persons to be nominated for each office have timely filed valid nominating papers seeking nomination for the election to that office. [Emphasis Added]** 10 ILCS 3.1-20-45

12. Under the precedent cited above, there is substantial compliance by all 3 candidates with respect to their nomination papers. As of the date of this decision, the possibility of a mayoral primary is still couched in the hypothetical, as only 4 mayoral candidates filed nominating papers. It is nonetheless undisputed that the April 4, 2017 Consolidated Municipal Election is the terminal election of this municipal election cycle. There is no determined need, at this time, to hold a February primary. The MOEB need not consider, and indeed lacks jurisdiction to, consider the matters of ballot lottery placement or candidate certification to the Cook County Clerk.
13. The objector indicated that the City's Corporation Counsel should have issued an advisory statement prior to candidate filing regarding the issues implicated in his objection. The Corporation Counsel, **properly**, did not do so. Any such advise would violate his ethical obligations to the City, to certain currently serving Aldermen filing nomination papers for Mayor, and to other Mayoral candidates. Any such advise would be an impermissible conflict of interest. Furthermore, the Corporation Counsel declined to infringe upon the statutory jurisdiction or duties of the City's statutorily designated local election official (the City Clerk) under the Illinois Election Code. 10 ILCS 5/1-3. Lastly, the City's Law Department has no role, authority, or responsibility to give legal advice to municipal election candidates.

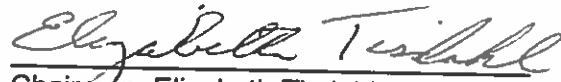
Order


14. For purposes of this Order, the Record is incorporated and referenced hereto, as if fully set forth herein. For the reasons set forth in the Record and also cited in this Order, the MOEB HEREBY ORDERS that:

The Board overrules all objections filed by William Arndt in case nos. 17-MOEB (Mayor) – EV-02; and EV-03.

15. For the reasons set forth in the Record, the Board notes objector withdrew the objection in case no. 17-MOEB (Mayor)-EV-01. There is no need to consider or rule upon that objection as it was withdrawn.
15. This FINAL Order and Decision is personally served upon the objector/counsel for objector and candidates/counsel for candidates at the date listed below, pursuant to 10 ILCS 5/10-10. It is a final administrative decision pursuant to 5 ILCS 5/10-10.1.

Dated: December 19, 2016


Chairman, Elizabeth Tisdahl
Municipal Officers Electoral Board


Member, Ald. Ann Rainey
Municipal Officers Electoral Board

Member, City Clerk Rodney Greene
Municipal Officers Electoral Board